

LAKE COUNTY PLANNING BOARD
September 14, 2016
Lake County Courthouse, Commissioners Office Rm 211
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, John Fleming, Bob Stone, Eileen Neill, Jerry Parson, Janet Camel (7:03 pm)

STAFF PRESENT: Jacob Feistner, Rob Edington, Lita Fonda, Wally Congdon

Steve Rosso called the meeting to order at 7:02 pm.

MISSION VISTA SUBDIVISION AMENDMENT

Jacob Feistner presented the staff report. (See attachments to minutes in the Sept. 2016 meeting file for staff report.)

Jerry asked questions regarding school district concerns. Jacob noted that with the review of Mission Vista II, the school district gave no concerns. John asked if the Rural Fire Department said they had sufficient tankers. Jacob read the relevant sections that reflected for the original subdivision, they didn't have the equipment but with the second one, they now had that equipment. Steve R spoke about #11 regarding a chain link fence. Jacob thought they could use wording so the fence could go if the pond structure was taken out. Bob asked about wells in the area. Jacob replied the wells were very deep. Someone mentioned one was at 670 feet. Discussion ensued.

Jay Bick introduced Brandon Bick and commented about the proposal. The approval with the stock pond occurred before big tankers were here. He talked about the background of the pond and possible dangers if kids played there, including possible fire with the weeds. Kids would be out of sight in a hole. He mentioned a plan to repair the well on lot B and for a new well on the property with the house. Water was plentiful but deep. Barbara Peterson mentioned that someone with a small lawn couldn't get a shower when he ran his sprinkler.

Bob checked that the road maintenance would be shared among 8 people instead of 5. William Hettich said he'd taken care of the road for 8 or 9 years prior to the current owner. Jay noted they'd chip sealed the road and William agreed they'd improved it a lot. Janet asked if the homeowners would share reclamation of the pond to level the banks. William thought the pond area belonged to the property owner. Janet asked if there was an easement to the homeowners. Jacob pointed to attachment 5, which showed the Mission Vista subdivision plat with a 30-foot wide access easement for the dry hydrant but it didn't call out an easement for the pond itself. He hadn't seen a document reflecting such an easement. John thought it should be filled in. Jay asked if the property owner had been involved with this meeting. Jacob clarified the meeting had to do with the Homeowners Association and with cleaning up the stock pond. He hadn't received something from the landowner of 1-D. Jay added he found the owner to be pretty unresponsive. Jacob pointed to a picture of the pond in the top picture of attachment 8, which showed the steepness and depth.

The fence came under discussion. Jacob observed the fence would have to come down to fill, level or smooth the pond area. Steve thought it should stay up until such time as the equipment was there to do the leveling. Jay said the first step was to get permission from the Planning Board to remove the pond. The second step would be for the subdivision and him. They would call the landowner and make an offer to fill it in. Steve thought it was up to the landowner if there wasn't an easement for the pond.

Wally gave history on the subdivisions and pond. No easement was done for the irrigation ditch to fill the water source. The easement, the right-of-way to get the water and the water right were not reserved. Within 5 or 6 years of this system being there, it failed. The pond could not be filled since there was no water source and they could also not seal it at that point in time. He gave more background. It was to the benefit of Jay Bick, the 4 owners, the County and the fire department to clean this up and do it right. He mentioned that a number of things had not been followed up. They'd saved a 30-foot route in to the pond but they didn't reserve something for the pond to be there. It was a condition of plat approval so the owner of that lot was stuck with the pond unless the condition of plat approval was changed to say the pond could go. He liked Steve's suggestion about the pond could go and so could the fence provided that when the fence was removed, the pond was graded down. The issue was the slope to make it safe. You didn't need to make people haul in fill. It didn't matter if they left a low place.

They'd gotten the road right. The purpose of the cul-de-sac was for fire trucks, ambulances or other large vehicles to turn around. The changes to the conditions of plat approval would clean up the mess that was left regarding things that weren't followed through during the ensuing crash of the economy [after plat approval of Mission Vista]. This was done for Mission Vista II a month ago. If the condition of removing the pond was that the fence and pond stayed until the grade was lessened, the owner would do that to remove that encumbrance off of this lot. He gave more background regarding the system for filling the pond.

Bob asked about a concern for Valley View School about possibly getting more students than they could handle. Wally replied it wasn't a worry in that there was only one more lot that got a house. The school was fine with Mission Vista II and didn't comment on three more houses. The school bus route was adequate to haul in kids who bussed. Jay pointed out the pullout for the school bus or for parents who were waiting.

Janet asked if this was still in the Irrigation Project and if each lot had to petition out. Wally said no one was sure because there was no water to this site. If people didn't want to be in the district, they could petition their lot out.

Jacob clarified that the owner of lot 1-D was still Osgood in response to John's question, and that they were changing the fire prevention control plan so the water source was not that pond. Wally noted that currently the owner couldn't get rid of the fence and the pond, per the condition of plat approval. The idea was to take this out by saying they had to grade down the slope first if they wished to remove the fence and the pond. The lot owner would have incentive to do this.

Steve checked for additional public comment. None was offered.

Steve suggested recommending approval to the Commissioners with the addition of specifying that when the fence was removed, the pond also had to be removed. Jacob referred to condition #11 on pg. 4. He suggested keeping that wording and adding, "If the stock pond is filled in, then the fence would no longer be required." Janet suggested saying 'filled in or graded down'. Jerry suggested including 'the pond may be abated' or something else to authorize the removal of the pond. Wally suggested, "The pond may be abated, at which point in time the fence could be removed and the pond shall be graded down." Steve asked about condition #10 and #11 and reference to the pond. Jacob said the reference was the fire plan, which included the pond. Steve noted only condition #11 mentioned the pond.

Motion made by Steve Rosso, and seconded by John Fleming, to recommend approval of the amendment with the changes discussed. Motion carried, all in favor.

DISCUSSION ITEM: Memorandum of Agreement Recommendation (7:50 pm)

Steve explained this involved a memorandum of agreement that was discussed at the last meeting and drafted by Frank Mutch, who was unable to attend tonight. He clarified that this was a draft letter to the Commissioners recommending a memorandum. He thought Frank's absence might limit their ability to finish this tonight. He was very interested in hearing from Janet, who hadn't been able to be at the last meeting.

Janet wished personally that Frank had contacted her to talk about this. It was difficult for people to understand that state regulations did not apply to tribes. Tribes were sovereign nations and did their subdivision review in a completely different way. They didn't have a planning board. If there was a planning board, she was sure the Tribes would invite non-Tribal members to be on the board. The Tribes had a Shoreline Protection Board with non-Tribal members and Tribal members. For subdivisions, they followed federal law and complied with the National Environmental Policy Act (NEPA) for land subdivisions on Tribal land, which was the majority of the Trust land. She referred to a map that was incorrect in its portrayal of Tribal land. There was actually more Tribal land than that map showed.

Janet explained that they followed the NEPA process. They had scoping meetings and an interagency review team. They dealt with wildlife issues, water quality, water quantity, sewage treatment, roads, power, infrastructure issues, fish and wildlife, aquatic lands, wetlands and irrigation. They would send a notice to the review team. The County could be added to that team. Then they scoped out the issues and addressed them in an environmental assessment (EA). An EA was done on every subdivision.

The Tribes also did a cultural clearance, where the site was reviewed by the culture committees and the historic preservation office. They were then told yes, they could develop it or no, they could not, or they could develop with certain parameters. Sometimes there were conditions. [The cultural committees or historic preservation office] liked to review the site when the excavation began. They wouldn't dig up someone's private property but they liked to be present in case burial remains or other artifacts were discovered, so often that condition was put on their permit. Three Tribal ordinances applied to cultural resources. The Tribes followed federal and Tribal law. It was a different process from state law but it was thorough. The Tribe had a 2-volume comprehensive plan, a Flathead Lake management plan and a Flathead River Protection

Zone. They tried not to develop things within a half mile of the river corridor except in Dixon and in the former Kerr Dam area. The exception to this was the less than 3% of the land base in Lake County that was individually owned Indian Trust.

She added that the Tribes also applied the Density Map to their subdivisions. If a subdivision involved more than 4 lots, they automatically asked the County for comment. They published a public notice for 2 to 4 weeks in the Tribal newspaper, which was a newspaper of general circulation, asking for comment. They followed the NEPA process, even for one lot.

Steve asked about the Environmental Assessment (EA). Janet explained that NEPA had three levels of documents. If there wasn't a land use change, they had certain criteria specified by the federal government that allowed a categorical exclusion. They still had a checklist to look at weeds, irrigation and so forth that she mentioned earlier. They would always get a cultural clearance. If there was no impact, the Superintendent of the US Dept. of Interior, Bureau of Indian Affairs would sign off on the document. The process was very formal.

If there could be some impact, they bypassed the categorical exclusion and did the full-blown EA, which was what usually happened. They hadn't done a subdivision in 3 years. She developed most of the Tribes' property so she knew the process thoroughly. They had development standards for most of the home sites. If significant impact was found in the interagency review process, it moved into a full-blown Environmental Impact Statement (EIS), which went into more depth about the potential impacts. She listed items such as school bus turn-arounds, ambulance, fire department as among the items at which they looked. For more than 4 lots, they required the agencies such as the power company, schools and hospitals to comment, just like the County did. They were following a process and used the County standards. They looked at the County standards for road right-of-way width. They had more stringent setbacks, requiring 15-foot setbacks from all property lines. You could get a fire truck between buildings built on the property.

Janet concluded that this was the process. If they were ever in need of a planning board, they would be willing to have a County member.

Steve asked who the owner was when the Tribes did a development. Janet said the Tribes owned land in common. 8000 Tribal members owned Tribal land together. The federal government held the land in trust on behalf of those owners. She gave some history. There were rights, such as hunting and fishing, that nonmembers did not have on the reservation. The water rights had not yet been adjudicated. There were other rights in limbo, such as irrigation. At this time, the Tribes were trying to work cooperatively and recognize that the state had a system within every county for planning, zoning and subdivision. The Tribes were working cooperatively within the process that was here on non-Indian fee land. With Missoula County, the Tribes had a memorandum of agreement that stated Missoula County had no jurisdiction over the Trust lands.

There were Tribal members that owned individual lands in Trust and there could be more than one owner in a parcel. Subdivision of that land was comparable to a family transfer in the County, where it didn't go through the subdivision process. This was less than 3% of the land base in Lake County. Most of those lands were already highly fractionated into multiple land ownerships. It wasn't actually subdivided, but someone could own 1/100th of 1 acre. They

owned an interest in the property rather than owning a [specific] piece. Because of the Trust responsibility, there was a complicated layer of ownership and jurisdiction. It wasn't a simple thing. The Tribes worked with federal law and Tribal law.

Steve thought the Tribes dealt with private land developers differently than the County. He asked if to deal with a private land developer, if the developer must be a part owner in the Trust land. Janet said that owner would have to have permission from the majority of the other owners to do something. Often they couldn't get that approval. The Tribes didn't get many subdivisions on these individually owned lands. Probably the last one that she saw was a 4-lot subdivision 10 years ago near Pablo reservoir. It didn't go through her office because it was like a family transfer. They were splitting it up for family members. It went through the Tribal Lands Dept. She found out about it after the fact.

Steve verified with Janet that land on the reservation could be private fee land, Tribal Trust land (owned by the Tribes) or Individual Indian-owned Trust land. Bob confirmed with Janet that the Tribal Land on which a Tribal Conservation license allowed him to hunt was one of these three. Steve asked about school trust lands in the reservation. Janet said those were state lands. Steve concluded there were state lands within the reservation managed by DNRC and federal lands like the bison range.

Steve thought this was good information for the Planning Board to understand. The Planning Board hadn't previously understood about the Tribes' process.

Bob checked that if an easement or exception was needed when he hired a Tribal member to build on fee property, the builder would go before the County for that. Was there a similar place that builder would have to go within the Tribes? Janet replied that they had septic permitting. She described various scenarios with Tribal lands and Tribal members for land and housing. When the Tribe subdivided land, it was only for lease purposes not for sale. There could be exchanges. Different federal laws restricted exchanges depending on when the land went into or out of Trust. She gave examples. Bob asked when a Tribal builder might need to get permission. Janet mentioned septic permits [from the Tribes] and electrical. Bob and Janet talked about specific examples.

Bob asked where someone got a variance in the Tribal world. Janet described that with the NEPA documents, most of the lots created were lease lots. You got a formal contract lease, which contained conditions of what you could do. If you needed a variance from the conditions, the Tribes did not allow them. Bob asked if someone could ask. Janet replied they could go to the Tribal Council. In the [Tribal] Planning Offices, they would give the reason for the condition in the lease and would have to revisit the NEPA document to see if that condition could be removed. They would probably put it out for comment again and look at a way to mitigate. It usually didn't happen.

Bob said it sounded like what Frank was suggesting wasn't possible because there was no place to invite a non-Tribal member to come sit. He suggested that Janet talk with Frank. Maybe the Board could make a motion to postpone or table this. Steve asked for clarification whether non-Tribal members could be involved in either the Tribal Trust or Individual Indian-Owned lands.

Janet said they could. Non-Tribal members could inherit individually owned Trust land down to the 1st or 2nd level of decendency. She described it further and answered more questions about specific examples and situations. It was very complicated.

Other Planning Board members thanked Janet for the information.

Janet brought up the jurisdiction item, which wasn't cut and dried. Two other boards contained nonmembers: the Mission Valley Power Consumer Council and the State Tribal Fish and Wildlife Advisory Board. With jurisdiction, she referred to the Brendale case from the Yakima Reservation. The county wanted to do some zoning in a predominantly tribally owned area. It was a split decision. There was never clear-cut guidance from the Supreme Court, where there was a three-way split. Wally mentioned that case was a giant question mark. The Supreme Court seemed to be waiting until they had another judge to actually make a ruling on that. It was argued 5/15/16.

Janet said the Tribes tried to have their system blend and mesh as much with the County regulations as possible while not conflicting with Tribal or federal laws. That was why she sat on the Planning Board—to try to keep that communication going and to try to look at what the County regulations were and how they could dovetail. She referred to the aim to have the shoreline regulations mesh.

Jacob asked who at the County had an opportunity to comment on a Tribal subdivision bigger than 4 lots. Janet replied that she would send it to the Planning Dept. She clarified for Jacob that all subdivisions got an EA (environmental assessment) unless they fit under the categorical exclusion category, which was usually just boundary readjustments or expansion of a lot. Steve mentioned there was a threshold that pushed it into an EIS. Janet added it was federal law and public information. Jacob said when the County had a required EA, the consultant prepared it and presented it to them. How did that work for the Tribe? Janet said that she prepared it or sometimes they hired consultants. She typically wrote the EA for the larger ones. For the smaller ones, someone would hire a consultant and she would review the document and make sure it complied with things. Then it would go out for public comment.

Bob asked if it was possible that the Planning Board would look at a Tribal subdivision. Janet said they could comment as members of the public. If you had a major concern with something the Tribes were doing, they wanted to hear about it. They wanted to know if there was something they missed. They didn't develop that much. For commercial property, if there was a change in land use, they had to do an EA. If the property was already commercial, they just did a categorical exclusion. She gave the example of a business park north of Pablo that might happen. They would do an EA. They already had preliminary cost estimates to find out if it was feasible to do, before doing an EA. The EA's took a lot of time. She gave some other examples of EA's and the time they took.

Motion by Steve Rosso, and seconded by John Fleming, to table further discussion. Motion carried, all in favor.

OTHER BUSINESS

Bob described a meeting in the large conference room where the Commissioners said they were going to create a body to look into the reasons that there was so much public support of the Density Map and Regulations. A couple people told him they were supposed to be on that committee. He'd heard nothing. Was there such a committee or would there be? Wally guessed if they got around to it, it would be December or January, given other issues, elections, and other pending items.

Janet checked with Jacob on the threshold for subdivision review by the Planning Board. Jacob explained that first minor subdivisions, which were not reviewed by the Board, were 5 or less [lots/units]. A subsequent minor was also 5 or less but was reviewed as a major. Six or more or a minor being divided again would be reviewed by the Planning Board.

MINUTES: (inadvertently skipped in agenda order)

August 10, 2016 minutes: On pg. 11 near the beginning of the 5th paragraph, Jerry corrected 'the County ran into Sanders' to 'the reservation ran into Sanders'. Steve gave the following changes. On pg. 1, in the first paragraph of the Bouchard Tracts item, 'memo' was changed to 'report'. In the first line of the 2nd page, 'with industrial' was crossed off. On pg. 9 in the last half of the long paragraph, 'encouraged them figure' was changed to 'encouraged them to figure'. In the first sentence of the 3rd paragraph of pg. 10, 'he was interesting' changed to 'he was interested'.

Motion by John Fleming, and seconded by Bob Stone, to approve the August 10, 2016 meeting minutes as amended. Motion carried, 5 in favor (Steve Rosso, John Fleming, Bob Stone, Eileen Neill, Jerry Parson) and 1 abstention (Janet Camel).

Steve Rosso, chair, adjourned the meeting at 8:32 pm.